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SUPREME COURT U.S.

No. **82 5646**

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1982

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LEROY CHASSON,

Petitioner

v.

JOSEPH PONTE and FRANCIS BELLOTTI,

Respondents

---

PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

---

Robert L. Sheketoff  
ZALKIND, ZALKIND & SHEKETOFF  
65a Atlantic Avenue  
Boston, MA 02110  
(617) 742-6020

Attorney for Petitioner Chasson

QUESTIONS PRESENTED

1. CAN OTHER INSTRUCTIONS TO A JURY EVER CURE AN UNCONSTITUTIONAL INSTRUCTION ON THE ELEMENT OF INTENT?
2. CAN A PROPER INSTRUCTION TO A JURY ON THE ELEMENT OF PREMEDITATION CURE AN UNCONSTITUTIONAL INSTRUCTION ON THE ELEMENT OF INTENT?
3. UNDER WHAT CIRCUMSTANCES MAY IT BE ASSUMED THAT A REASONABLE JUROR COULD NOT HAVE RELIED ON AN UNCONSTITUTIONAL "PRESUMED INTENT" INSTRUCTION?

PARTIES

Petitioner Leroy Chasson is presently sentenced to natural life at the Massachusetts Correctional Institution at Walpole, Massachusetts.

Respondents are Joseph Ponte, the Superintendent at the Massachusetts Correctional Institution at Walpole, Massachusetts, and Francis Bellotti, the Attorney General of Massachusetts.

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Leroy Chasson petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit entered in this case on August 3, 1982.

### Opinions Below

The opinion of the Court of Appeals for the First Circuit affirming an order of the United States District Court for the District of Massachusetts dismissing Chasson's petition for a writ of habeas corpus has not been published. It is set out in the Appendix, infra., pp. A1 to A6.

The opinion of the District Court dismissing the habeas corpus petition is not published. It is set out in the Appendix, infra., pp. A7 to A12.

The opinion of the Supreme Judicial Court of Massachusetts, which forms the basis for the habeas corpus petition, is reported as Commonwealth v. Chasson, 423 N.E. 2d 306 (Mass. 1981). It is set out in the Appendix, infra., pp. A13 to A20.

### Jurisdiction

The judgement of the Court of Appeals was entered on August 3, 1982, and this petition has been filed within ninety days of that date, as required by 28 U.S.C. §2101(c). Jurisdiction to review the judgment of the Court of Appeals is conferred by 28 U.S.C. §1254(1).

### Constitutional Provisions Involved

This case involves Section 1 of the Fourteenth Amendment. Section 1 of the Fourteenth Amendment to the United States Constitution provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of every State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."



Statement of the Case

Petitioner seeks review of a judgment of the Court of Appeals for the First Circuit affirming a judgment of the District Court for the District of Massachusetts, dismissing petitioner's petition for a writ of habeas corpus under 28 U.S.C. §2254. Petitioner's central claim arises from an instruction by the state trial court judge to the jury at petitioner's trial for first degree murder and assault and battery by means of a deadly weapon. In instructing the jury on the element of intent, the trial judge stated that a person is presumed to intend the ordinary and natural consequences of his acts. The judge's instruction relieved the Commonwealth of the burden of proving beyond a reasonable doubt an essential element of each of the crimes, and shifted the burden of proof on that element to the defendant. Petitioner's Fourteenth Amendment right to due process of law was thereby violated. Petitioner claims that the court's proper instruction on the element of premeditation in first degree murder did not cure the error in the instruction on intent, and that proper instructions on other elements of an alleged crime can never cure a "presumed intent" instruction. The petitioner further claims that a reasonable juror could have relied on the "presumed intent" instruction in reaching his verdict of guilty.

State Court Proceedings

On September 8, 1977 a grand jury sitting in Norfolk County, Massachusetts, returned indictments against Leroy Chasson, charging him with murder in the first degree of Paul Melody and assault and battery by means of a dangerous weapon on Robert Hayward. Chasson was tried before McGuire, J. and a jury on May 15 to June 1, 1978. At trial, petitioner argued that the killing and injury of the alleged victims occurred when, in the confusion of a scuffle, petitioner in self-defense waved out with a knife which he had picked up from the ground.

At the conclusion of the evidence, the trial court judge gave the following instruction on the element of intent:

So we have the words that must be discussed and their legal meanings explained to you; and even though the word does not appear in the statute, I am going to charge you on intent, the word, "intent", because one is responsible for acts that he intends to do; and yet, because of our very nature as men and women, no one can be sure of what is in the mind of another person. Your intention of course, is that which lies within the recesses of your mind. So how do we find intention?

It is rather simple. When one does an unlawful act, he is by the law presumed to have intended to do it and to have intended its ordinary and natural consequences on the ground that these must have been within his contemplation, if he is a sane man and acts with the deliberation which ought to govern men in the conduct of their affairs. So much for intent.

Appendix to this petition, p. A3. No further instructions were given on the element of intent.

The jury returned guilty verdicts on both indictments, and petitioner was sentenced to imprisonment for his natural life.

On March 18, 1981, the Supreme Judicial Court affirmed the convictions. Commonwealth v. Leroy Chasson, 423 N.E. 2d 306. The Court characterized the trial judge's instruction on intent as "obscure", and held that because of its obscurity, and because the trial judge properly charged the jury on the element of deliberate premeditation, the jury could not have reasonably understood the instruction either as shifting the burden of proof from the Commonwealth or as creating a constitutionally impermissible presumption. Id. at 312-313.

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- Federal Court Proceedings

Petitioner filed a habeas corpus petition in the United States District Court for the District of Massachusetts, claiming that his constitutional right to due process of law was violated by the "presumed intent" instruction. The petition was dismissed by Marzone, D.J. on January 7, 1982, on the grounds that although it is always error to instruct that a person is presumed to intend the natural and probable consequences of his acts, the error was cured in this case by



the trial judge's other instructions, particularly the instruction on deliberate premeditation. The Court further held that any error in the instruction on intent was harmless, because petition admitted intent in arguing a theory of self-defense.<sup>1</sup>

The First Circuit Court of Appeals affirmed the judgment of the District Court, holding that the instruction on deliberate premeditation cured any error in the "presumed intent" instruction.

#### Reasons for Granting the Writ

The decision of the First Circuit Court of Appeals that an unconstitutional "presumed intent" instruction can be cured by correct instructions on other elements of a crime raises an important question of constitutional law which this Court has yet to decide. In Sandstrom v. Montana, 422 U.S. 510 (1979), this Court held that a "presumed intent" instruction, essentially identical to the instruction challenged by petitioner, violated the Fourteenth Amendment requirement that the state prove every element of a crime beyond a reasonable doubt. The opinion in Sandstrom did not, however, reach the question of whether a "presumed intent" instruction could ever be cured by proper instructions to the jury on other elements of the crime, and the Circuit Courts of Appeal are in conflict on this point. Petitioner's case squarely presents the issue for the Court's consideration.

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<sup>1</sup> This latter position is untenable since petitioner at trial did not admit intent to kill, nor did he need to do so in order to raise self-defense under state law. The First Circuit did not rely on this position.

1. There is a conflict among the Circuits about whether a "presumed intent" instruction can be cured by other instructions.

The Circuit Courts of Appeal are divided on the question of whether an unconstitutional "presumed intent" instruction can be cured by instructions on the other elements of the alleged criminal offense. The First Circuit found a cure in petitioner's case in instructions on the element of deliberate premeditation. The Second Circuit has a similar practice, finding a cure in other jury instructions when a presumed intent instruction has been given. Nelson v. Scully, 672 F.2d 266 (2nd Cir. 1982), cert. den., 102 S.Ct. 2301 (1982).

The Eighth Circuit, however, has held that a "presumed intent" instruction is almost always constitutional error in itself, and that it is highly unlikely that other instructions could ever mitigate so serious a mistake. Diets v. Solem, 640 F.2d 126, 131 (8th Cir. 1981). The Fifth Circuit has indicated its puzzlement about whether Sandstrom requires application of the prophylactic rule that when a "presumed intent" instruction is given, then constitutional error will automatically be found. United States v. Spiegel, 604 F.2d 961, 969, n.15 (5th Cir. 1979), cert. den., 446 U.S. 935. See also United States v. Chiantese, 560 F.2d 1244, 1255 (5th Cir. 1977), cert. den. 441 U.S. 922.

The Sixth Circuit has not directly considered whether Sandstrom bars looking to other instructions to cure a "presumed intent" instruction, but its opinions show a clear reluctance to search for a cure. United States v. Williams, 665 F.2d 107 (6th Cir. 1981); Harless v. Anderson, 664 F.2d 610 (6th Cir. 1981).

2. A fundamentally important question of constitutional law has been left unresolved due to uncertainty about the effect of a "presumed intent" instruction.

Important constitutional rights are endangered when a jury is given confusing and inconsistent instructions on the elements of a criminal offense. It is a well-established proposition that due process requires that each element of a criminal offense be proven by the state beyond a reasonable doubt. In re Winship, 397 U.S. 358 (1970). When a jury is given a "presumed intent" instruction as part of a larger package of instructions, there is no guarantee that a jury will not rely upon that instruction either to conclusively presume that the defendant possessed the requisite criminal intent or to shift the burden of proof on the element of intent to the defendant. This Court recognized that danger in Sandstrom when it held that other instructions about the state's burden of proving beyond a reasonable doubt that the defendant caused the death purposely or knowingly could not compensate for the damage done by a "presumed intent" instruction.

The case at bar illustrates very clearly the likelihood of prejudice to a defendant's rights when courts look to other instructions to cure a "presumed intent" instruction. The First Circuit found a cure in the trial judge's instruction on deliberate premeditation.

[O]ur Courts have said that deliberate premeditation does not require any particular time. The word, "deliberately", in the phrase, "deliberately premeditated malice aforethought", refers to the prior formation of a purpose to kill rather than to any definite length of time. And upon evidence that there was a sequence of events, the jury can find or not find, depending upon your view, whether there was deliberate premeditation to do a certain act. It is not a matter of time. It can be long or short. It can be as short as it requires a person to make an intent, to intend to do something. And if he does that, it could be found by you, but it is for you to say whether it is deliberately premeditated.

Appendix to this petition, p. A4.

Under this instruction, a jury finding of deliberate premeditation is consistent with the jury presuming intent and, having thereby found intent, going to find that formation of intent must have occurred prior to the act. Once the erroneous instruction has been given and the judge has not directly instructed the jury to ignore that instruction, there is no reason to believe that a jury will not rely upon it in a constitutionally objectionable way.

In determining whether constitutional error has been committed, the Circuit Courts now employ the test of whether a reasonable juror would have relied on the "presumed intent" instruction. Dietz v. Solem, supra. at 131; Nelson v. Scully, supra. at 271. This superficially uniform rule masks an actual wide range of practices by the Circuit Courts in deciding whether an objectionable instruction has been cured. Dietz v. Solem, supra.; Nelson v. Scully, supra.

Without guidance from this Court, the law on a critical point of constitutional doctrine will continue to vary by Circuit. At least one Circuit has called on this Court to clarify its position on whether a "presumed intent" instruction can ever be cured by other instructions. United States v. Spiegel, supra. at 969, n.15. The unanimous opinion in Sandstrom reflects the seriousness of the violation of constitutional rights which occurs when a jury is given a "presumed intent" instruction. The holding in Sandstrom is completely undercut if a too quick and too easy cure is found for the clear violation of due process which this Court found in the "presumed intent" instruction.

#### Conclusion

For the foregoing reasons, and in order to secure petitioner's rights to due process of law, the writ should be granted.

Dated: 10/29/82

Respectfully submitted,

*Robert L. Sheketoff*

Robert L. Sheketoff  
ZALKIND, ZALKIND & SHEKETOFF  
65a Atlantic Avenue  
Boston, MA 02110  
(617) 742-6020

Attorney for Petitioner Chasson